

(e) The unrestricted rates authorized under this subpart shall be shown on the appropriate regular or special schedule or as an amendment to the schedule and shall indicate the wage area (or part thereof) and each occupation or occupational specialization and grade for which the rates are authorized. These rates shall be paid by all agencies having such positions in the wage area (or part thereof) specified.

[57 FR 57876, Dec. 8, 1992]

PART 534—PAY UNDER OTHER SYSTEMS

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AUTHORITY: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

Subpart A [Reserved]

Subpart B—Student-Employees in Government Hospitals

SOURCE: 44 FR 54693, Sept. 21, 1979, unless otherwise noted.

§ 534.201 General.

Under subchapter V of chapter 53 of title 5, United States Code (U.S.C. 5351–5356), agencies may pay stipends and provide certain services to certain student-employees assigned or attached to hospitals, clinics, or medical or dental laboratories operated by agencies. Student-employees covered under the program are excluded from certain provisions of law relating to classification, General Schedule pay, premium pay, leave, and hours of duty. This subpart authorizes the coverage of certain positions under this program and establishes maximum stipends for student-employees in the program.

§ 534.202 Coverage.

In addition to the student-employees specified in 5 U.S.C. 5351(2)(A), the following student-employees are covered under this program, provided they are assigned or attached principally for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency:

(1) Any student-employee whom an agency finds is properly covered under this program, provided that the student-employee is a registered student at an accredited academic institution and that the assignment or attachment for training purposes to the hospital, clinic, or medical or dental laboratory is a part of a medical or dental training program accredited by an appropriate accrediting body;

(2) Any student-employee whom an agency finds is properly covered under

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this program, provided that the student-employee, during the period of assignment or attachment to the hospital, clinic, or medical or dental laboratory, will receive experience or training that is required to obtain a certificate or license in a medical or dental field; or

(3) Any student-employee not otherwise covered under this program whom the Office of Personnel Management

approves for coverage as a student-employee under this program.

[44 FR 54693, Sept. 21, 1979, as amended at 64 FR 68931, Dec. 9, 1999]

§ 534.203 Maximum stipends.

(a) Except as authorized under paragraph (b) or (c) of this section, stipends are to be set by the agency, subject to the maximum stipends prescribed in the following table:

Maximum Stipends Prescribed

Code symbol	Academic level of approved training program	Maximums by grade and step ¹
L-A	Below high school graduation	GS-1-1 (minus 3 steps).
L-1	First year college undergraduate	GS-2-1 (minus 3 steps).
L-2	Second year college undergraduate	GS-3-1 (minus 3 steps).
L-3	Third year college undergraduate	GS-3-3 (minus 3 steps).
L-4	Fourth year college undergraduate	GS-4-2 (minus 3 steps).
L-5	First year postgraduate predoctoral	GS-5-1 (minus 3 steps).
L-6	Second year postgraduate predoctoral	GS-7-1 (minus 3 steps).
L-6	Third year medical school	GS-7-1 (minus 3 steps).
L-7	Third year postgraduate predoctoral	GS-9-1 (minus 3 steps).
L-7	Fourth year medical school	GS-9-1 (minus 3 steps).
L-8	Fourth year postgraduate predoctoral	GS-10-1 (minus 3 steps).
L-8	Medical or dental internship	GS-10-1 (minus 3 steps).
L-9	Fifth year postgraduate w/o doctorate	GS-11-1 (minus 3 steps).
L-9	First year postgraduate (Ph. D.)	GS-11-1 (minus 3 steps).
L-9	First year medical or dental residency	GS-11-1 (minus 3 steps).
L-10	Second year postdoctoral (Ph. D.)	GS-12-1 (minus 3 steps).
L-10	Second year medical or dental residency	GS-12-1 (minus 3 steps).
L-11	Third year medical or dental residency	GS-12-4 (minus 3 steps).
L-12	Fourth year medical or dental residency	GS-13-1 (minus 3 steps).
L-13	Fifth year medical residency	GS-14-1 (minus 3 steps).

¹The maximum money amount in each case is derived by subtracting from the statutory salary for the appropriate grade a sum equivalent to three step increments of that grade. This amount includes overtime pay, maintenance allowances, and other payments in money or kind.

(b) An agency may pay a student-employee a stipend in excess of the amount prescribed under paragraph (a) of this section only if the Office of Personnel Management has determined that a higher maximum stipend is warranted for the student-employee.

(c) Maximum stipends for positions in the Public Health Service in which duty requires intimate contact with persons afflicted with leprosy are increased above the rates prescribed in paragraph (a) of this section to the same extent that additional pay is provided by Public Health Service Regulations (42 CFR 22.1) for employees subject to the General Schedule (part 531 of this chapter).

(d) Overtime pay, maintenance allowances, and other payments in money or kind for a student-employee must be considered as part of the student-employee's stipend for the purposes of this

section, and therefore, may not be used to cause the stipend to exceed the maximum stipend established under this section.

(e) A trainee at a non-Federal hospital, clinic, or medical or dental laboratory who is assigned to a Federal hospital, clinic, or medical or dental laboratory as an affiliate for a part of his or her training may not receive a stipend from the Federal agency other than any maintenance allowance that is provided.

§ 534.204 Previous authorizations.

The provisions of this subpart do not terminate any authorization approved by the Civil Service Commission or the Office of Personnel Management before February 15, 1979, and such authorizations remain in effect until modified or terminated by an agency or the Office

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of Personnel Management in accordance with the provisions of this subpart.

Subpart C—Basic Pay for Employees of Temporary Organizations

SOURCE: 67 FR 3582, Jan. 25, 2002, unless otherwise noted.

§ 534.301 Purpose.

This subpart provides rules for determining the rate of basic pay and locality-adjusted rate of basic pay for employees who are appointed to positions in temporary organizations and compensated under 5 U.S.C. 3161. Such temporary organizations are established by law or Executive order. This subpart does not provide authority to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific statutory authority.

[67 FR 63049, Oct. 10, 2002]

§ 534.302 Coverage.

This subpart applies to employees in executive level and staff positions in temporary organizations. Such employees are not subject to the provisions applicable to General Schedule employees covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

[67 FR 63049, Oct. 10, 2002]

§ 534.303 Basic pay for executive level positions.

(a) Rates of basic pay for executive level positions of temporary organizations may not exceed the maximum rate of basic pay established for the Senior Executive Service under 5 U.S.C. 5382. Therefore, the highest rate of basic pay for executive level positions of temporary organizations, not including any applicable locality-based comparability payment under 5 U.S.C. 5304, may not exceed the rate of basic pay for level IV of the Executive Schedule.

(b) Employees in executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Local-

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ity-adjusted rates of basic pay for executive level positions may not exceed the rate of basic pay for level III of the Executive Schedule.

§ 534.304 Basic pay for staff positions.

(a)(1) Rates of basic pay for staff or other non-executive level positions of temporary organizations may not exceed the maximum rate of basic pay for grade GS-15 of the General Schedule under 5 U.S.C. 5332, excluding any locality-based comparability payment under 5 U.S.C. 5304.

(2) In establishing rates of basic pay for staff and other non-executive level positions of temporary organizations, the head of a temporary organization must give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. The head of a temporary organization must also take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility.

(b) Employees in staff and other non-executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay may not exceed the locality-adjusted rate of basic pay for grade GS-15 of the General Schedule under 5 U.S.C. 5304, for the locality pay area involved (not to exceed the rate for level IV of the Executive Schedule).

(c) Notwithstanding the limitations in paragraphs (a) and (b) of this section, the rate of basic pay and locality-adjusted rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of a temporary organization to be exceptional, exceed the maximum rates established under those paragraphs. However, the higher payable rates may not exceed the applicable maximum rate of basic pay or locality-adjusted rate of basic pay authorized under this subpart for an executive level position.

[67 3582, Jan. 25, 2002, as amended at 67 FR 63050, Oct. 10, 2002]

§ 534.305 Pay periods and computation of pay.

(a) The requirements of 5 U.S.C. 5504, must be applied to employees of temporary organizations. This includes requirements for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate.

(b) Employees of temporary organizations must receive basic pay on an hourly basis.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

SOURCE: 54 FR 2987, Jan. 23, 1989, unless otherwise noted.

§ 534.401 Definitions and setting individual basic pay.

(a) *Definitions.* In this subpart—

Agency means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

ES rate means one of the five or more rates of basic pay established by the President under 5 U.S.C. 5382 for the Senior Executive Service.

Senior executive means a member of the Senior Executive Service (SES).

(b) *Setting pay upon initial appointment.* (1) An appointing authority may set the rate of pay of an individual at any ES rate upon initial appointment to the SES except under the conditions described in paragraph (b)(2) of this section.

(2) Subject to paragraph (b)(4) of this section, if an individual who receives an initial career appointment in the SES—

(i) Has at least 5 years of current continuous service in one or more positions in the competitive service and is appointed without any break in service, the initial rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the appointment.

(ii) Holds a position that is converted from the competitive service to a career reserved position in the SES and as of the conversion date the individual has at least 5 years of current continuous service in one or more positions in the competitive service, the initial

rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the conversion of the position.

(3) For the purpose of paragraph (b)(2) of this section, *rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee entitled to grade or pay retention, the employee's retained rate of pay, before any deductions and exclusive of additional pay of any other kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

(4) If pay setting is subject to paragraph (b)(2) of this section and the rate of basic pay in the individual's current position exceeds the maximum ES rate, then the initial rate of pay shall be set at the maximum ES rate.

(c) *Adjusting pay while in the SES.* (1) The pay of a senior executive may not be adjusted by an agency more than once in any 12-month period. A pay adjustment includes:

(i) The assignment of an ES rate upon initial appointment to the SES;

(ii) The change from one ES rate to another while employed in the SES; or

(iii) The assignment of an ES rate upon reappointment to the SES following a break in SES service if the new ES rate is different from the executive's former rate or if the break in service exceeds 12 months.

(2) An appointing authority may raise the pay for a senior executive any number of ES rates at the time of an adjustment.

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of an adjustment. Restrictions on reducing pay of career senior executives are in paragraph (f) of this section.

(d) *Setting pay upon transfer.* An appointing authority may set the pay of a senior executive transferring from another agency at any ES rate. If the pay is set at the same rate the executive had in his or her former agency, the action is not considered a pay adjustment for purposes of paragraph (c) of this section.

(e) *Setting pay following a break in SES service*—(1) *General.*(i) An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment to the SES if:

(A) There has been a break in SES service of more than 30 days;

(B) There has been a break in SES service of 30 days or less, but the executive's last ES pay adjustment was more than 12 months earlier; or

(C) The reappointment is in a different agency.

(ii) Otherwise, pay must be set at the executive's former ES rate and may not be adjusted until 12 months from the last SES pay adjustment, in accordance with paragraph (c) of this section.

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. These provisions apply to a former career senior executive who is reinstated under 5 CFR 317.703.

(i) If the individual elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, only if 12 months have elapsed since the last SES pay adjustment; and the adjustment must be in accordance with paragraph (c) of this section.

(ii) If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing pay of career senior executives.* (1) The ES rate of a career senior executive may be reduced involuntarily in the appointee's agency or upon a transfer of function to another agency only:

(i) For performance reasons, i.e., the executive has received a less than fully successful performance rating under 5 CFR part 430, subpart C, or has been conditionally recertified or not recertified under 5 CFR 317.504; or

(ii) As a disciplinary action resulting from conduct related activity, e.g., misconduct, neglect of duty, or malfeasance.

(2) If the pay reduction is for performance reasons, the agency shall provide the executive at least 15 days' advance written notice.

(3) If the pay reduction is for disciplinary reasons, the agency shall:

(i) Provide the executive at least 30 days' advance written notice;

(ii) Provide a reasonable time, but not less than 7 days, for the executive to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(iii) Allow the executive to be represented by an attorney or other representative; and

(iv) Provide the executive a written decision and specific reasons therefor at the earliest practicable date.

[54 FR 2987, Jan. 23, 1989, as amended at 58 FR 58261, Nov. 1, 1993; 60 FR 6389, Feb. 2, 1995; 61 FR 3542, Feb. 1, 1996]

§ 534.402 Aggregate compensation.

Senior executives are subject to the aggregate compensation limitations in subpart B of part 530 of this chapter.

[56 FR 18662, Apr. 23, 1991]

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the individual must have been an SES career appointee as of the end of the performance appraisal period; and the individual's most recent performance rating of record under part 430, subpart C, of this chapter for the appraisal period must have been "Fully Successful" or higher.

(2) Individuals eligible for a performance award include:

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the salary of the individual is above the ES-6 pay rate, the ES-6 rate is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

(ii) A reemployed annuitant with an SES career appointment.

(iii) An SES career appointee who is on detail. If the detail is to another agency, eligibility is in the individual's official employing agency, i.e., the

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agency from which detailed. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any award, as agreed upon by the two agencies; but the reimbursement does not affect the award pool for either agency as calculated under paragraph (b) or this section.

(3) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on performance appraisals of career appointees because there exists an insufficient number of career appointees.

(4) The agency head must consider the recommendations of the Performance Review Board (PRB), but the agency head has the final authority as to who is to receive a performance award and the amount of the award.

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Ten percent of the aggregate career SES basic pay for the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Twenty percent of the average annual rates of basic pay for career SES appointees of the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period. The rate of basic pay does not include locality-based comparability payments under 5 U.S.C. 5304 and 5 CFR part 531, subpart F, or special law enforcement adjustments under section 404 of the Federal Employees Pay Comparability Act of 1990 and 5 CFR part 531, subpart C.

(d) OPM shall issue guidance concerning the distribution of performance awards within an agency.

(e) Agencies shall submit their distribution of performance awards, the total amount of awards, and the aggregate payroll or average rate of basic pay as computed under paragraph (b) of this section to OPM no later than 14 days after the date the performance awards are approved by the agency. If OPM determines that an agency's payments do not meet the requirements of law or regulations, the agency shall take any corrective action directed by OPM.

(f) Performance awards shall be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the Executive Level I ceiling on aggregate compensation during a calendar year under subpart B of part 530 of this chapter. In that case, any amount in excess of the ceiling shall be paid at the beginning of the following calendar year in accordance with subpart B of part 530 of this chapter. The full performance award, however, is charged against the agency bonus pool under paragraph (b) of this section for the fiscal year in which the initial payment was made.

[52 FR 2, Jan. 2, 1987, as amended at 55 FR 1353, Jan. 16, 1990; 57 FR 10125, Mar. 24, 1992; 60 FR 6389, Feb. 2, 1995; 64 FR 72889, Dec. 29, 1999]

§ 534.404 Pay computation for members of the Senior Executive Service.

(a) Except as provided in paragraph (b), pay for members of the senior executive service shall be computed in accordance with 5 U.S.C. 5504(b).

(b) From the first day of the first pay period beginning on or after January 1, 1984, to derive an hourly rate divide the annual rate by 2,087.

[49 FR 28389, July 12, 1984]

§ 534.405 Restrictions on premium pay and compensatory time.

(a) Under 5 U.S.C. 5541(2)(xvi) and 5 CFR 550.101(b)(18), members of the Senior Executive Service (SES) are excluded from premium pay, including overtime pay.

(b) Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as

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an SES member. SES members are eligible, however, for compensatory time off for religious purposes under 5 U.S.C. 5550a and 5 CFR part 550, subject J.

[60 FR 6390, Feb. 2, 1995]

Subpart E—Pay for Senior-Level and Scientific and Professional Positions

SOURCE: 56 FR 18662, Apr. 23, 1991, unless otherwise noted.

§ 534.501 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and under § 317.303 of this chapter remained at grade GS-16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive Service, or Senior Cryptologic Executive Service; or

(3) Positions where pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992]

§ 534.502 Pay range.

A pay rate fixed under this subpart shall be—

(a) Not less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and

(b) Not greater than the rate of basic pay payable for level IV of the Executive Schedule.

§ 534.503 Pay setting.

(a) Each agency with positions subject to this subpart shall establish written procedures for setting the pay of incumbents of the positions in ac-

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cordance with the provisions of law and OPM regulations. The head of each agency, or his or her designee, shall set the rate of pay of individuals under this subpart in accordance with the agency's written procedures.

(b) The agency's written procedures shall include—

(1) A description of the structure of the pay system;

(2) The criteria that will be used to assign rates of pay to individual employees;

(3) The 12-month waiting period on pay adjustments, as provided in paragraph (c) of this section;

(4) The designation of the official or officials who will have authority to set pay; and

(5) The management controls that will be applied to assure compliance with the procedures and a reasonable distribution of pay within the pay range.

(c) Pay of an individual may not be adjusted more than once in any 12-month period.

(1) A pay adjustment includes the assignment of a pay rate upon initial appointment.

(2) An annual adjustment in pay under § 534.504 of this subpart shall not be considered a pay adjustment under this paragraph if it does not exceed the greater of the annual General Schedule adjustment under 5 U.S.C. 5303 or the Executive Schedule adjustment under 5 U.S.C. 5318 effective the same date.

(3) Pay of an SL or ST employee transferring from another agency, or a military department, may be set at any rate. If the pay does not exceed the employee's former rate, the pay action does not start a new 12-month period.

(d) Any reduction in the basic pay of an individual is subject to the provisions of subparts C and D of part 752 of this chapter.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992; 66 FR 66711, Dec. 27, 2001]

§ 534.504 Annual adjustment in pay.

Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of pay under the General Schedule, each rate of pay

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established under this subchapter shall be adjusted by such amount as the head of the agency considers appropriate, in accordance with the provisions of § 534.503 of this part.

§ 534.505 Pay related matters.

(a) *Aggregate compensation.* Limits on aggregate compensation, including basic pay, are in 5 U.S.C. 5307 and part 530, subpart B, of this chapter.

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. chapter 45 and § 451.104(a)(3) of this chapter.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992; 63 FR 53276, Oct. 5, 1998]

§ 534.506 Conversion provisions.

(a) This section covers initial conversion to the pay system under 5 U.S.C. 5376 as of the effective date of these regulations.

(b) The rate of basic pay for any individual converting to a pay system under 5 U.S.C. 5376 shall be at least equal to the rate payable to that individual immediately before such conversion, including any interim geographic adjustment authorized by Schedule 9 of Executive Order 12736 of December 12, 1990.

(c) If there is an increase in an individual's rate of basic pay upon conversion, other than to the minimum rate under 5 U.S.C. 5376, the increase must be approved by the head of the agency or his or her designee.

Subpart F—Pay for Administrative Appeals Judge Positions

SOURCE: 66 FR 63908, Dec. 11, 2001, unless otherwise noted.

§ 534.601 Coverage.

(a) This subpart implements 5 U.S.C. 5372b and applies to administrative appeals judge positions, the duties of which are not classifiable above GS-15 under 5 U.S.C. 5108 and which primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

(b) This subpart does not apply to—

(1) Senior-level positions classified above GS-15 pursuant to 5 U.S.C. 5108;

(2) Scientific or professional positions established under 5 U.S.C. 3104;

(3) Senior Executive Service positions established under 5 U.S.C. 3132 or 3151;

(4) Positions for which pay is fixed by administrative action and limited to level IV of the Executive Schedule under 5 U.S.C. 5373;

(5) Administrative law judge positions appointed under 5 U.S.C. 3105; or

(6) Positions in agencies that are excluded from chapter 51 of title 5, United States Code, by section 5102(a) or 5102(c) or other provision of law.

§ 534.602 Definitions.

Administrative appeals judge position means a position not classified above GS-15 under 5 U.S.C. 5108 and for which the duties primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

Administrative law judge means an individual in an *administrative law judge* position as that term is defined in section 930.202 of this chapter.

Agency means an *Executive agency*, as defined in 5 U.S.C. 105, excluding the U.S. General Accounting Office.

Head of an agency means the head of an Executive agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

§ 534.603 Rates of basic pay.

(a) The administrative appeals judge pay system (AA) has six rates of basic pay—AA-1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL-3/A, B, C, D, E, and F, respectively, of the administrative law judge pay system established under 5 U.S.C. 5372 and part 930, subpart B, of this chapter.

(b) The rates of basic pay of the administrative appeals judge pay system will be adjusted at the same time and in the same manner as adjustments are made in the corresponding rates of basic pay for the administrative law judge pay system under 5 U.S.C. 5372.

§ 534.604 Pay administration.

(a) The head of each agency must fix the rate of basic pay for each administrative appeals judge position within the agency.

(b) Upon initial appointment, an agency must set the rate of basic pay of an administrative appeals judge at the minimum rate AA-1 of the administrative appeals judge pay system, except as provided in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) An agency must set the pay of an employee under the General Schedule pay system who is appointed to an administrative appeals judge position without a break in service at the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the rate of basic pay the employee received immediately prior to such appointment, not to exceed the rate of basic pay for AA-6. If the resulting basic pay increase is less than one-half of the dollar value of the employee's next within-grade increase, the agency must set the employee's rate of basic pay at the next higher rate of basic pay in the basic rate range of the administrative appeals judge pay system.

(2) An agency may offer an administrative appeals judge applicant with prior Federal service a rate up to the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the employee's highest previous rate of basic pay in a Federal civil service position, not to exceed the rate of basic pay for AA-6.

(3) An agency may offer an administrative appeals judge applicant with superior qualifications who is not a current Federal employee a higher than minimum rate when such a rate is clearly necessary to meet the needs of the Government. An agency may pay a higher than minimum rate of pay that is next above the applicant's existing pay or earnings, up to the maximum rate AA-6. Superior qualifications for applicants include, but are not limited to, having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field.

(c) Administrative appeals judges will advance successively to rates AA-2, 3, and 4 upon completion of 52 weeks of service in the next lower rate, and to rates 5 and 6 upon completion of 104 weeks of service in the next lower rate. Advancement to a higher rate takes effect on the first day of the first pay period beginning on or after completion of the required period of service. Time in a nonpay status is creditable service in the computation of a waiting period in so far as it does not exceed 2 weeks for each 52 weeks of service. Time in a nonpay status is fully creditable if the absence is due to military service, as defined in 5 U.S.C. 8331(13), or receipt of injury compensation under chapter 81 of title 5, United States Code. Time under pay systems outside the administrative appeals judge pay system is not creditable service in computing the required waiting period, except that time under the administrative law judge pay system established under 5 U.S.C. 5372 is creditable when an individual moves from that system to the administrative appeals judge pay system without a break in service.

(d) An agency must use the following procedures to convert an administrative appeals judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(1) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative appeals judge's basic daily tour of duty.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 534.605 Conversion.

On the first day of the first pay period beginning on or after December 11, 2001, agencies must convert the rate of basic pay of an administrative appeals judge to the lowest rate of basic pay provided by § 534.603(a) of this subpart that equals or exceeds the rate of basic pay the administrative appeals judge received immediately before that date.